

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THERON AND LINDA RUST,

Plaintiffs,

v.

BITTNER & HAHS, PC AND,
COLUMBIA RECOVERY GROUP,
LLC,

Defendants.

NO. CV-11-3057-LRS

**ORDER GRANTING
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT**

BEFORE THE COURT are the following motions: Defendant Bittner & Hahs, PC's ("Defendant") Motion For Summary Judgment (ECF No. 46); and Defendant Columbia Recovery Group, LLC's Motion for Summary Judgment (ECF No. 41). A telephonic hearing was held March 22, 2012. Joseph Panvini participated on behalf of the Plaintiffs; Kevin Curtis and Jeffrey Hassan participated on behalf of Defendants. The Court having considered the oral and written argument of counsel, enters this Order.

A. Summary of Facts

Resource Management ("Resource") is a sole proprietorship of which Theron Rust is the chief executive officer and Linda Rust its financial manager. Tracy Rust, Theron and Linda's daughter, was an employee of Resource. Columbia Recovery Group, LLC ("Columbia") is a collection agency. Bittner & Hahs, PC ("B&H"), a law firm registered to do business in the State of Oregon, represented Columbia in its state court action against Theron and Linda Rust.

On or about April 9, 2009, Resource, through Theron, signed a letter to

1 Nexus Apartments ("Nexus") wherein Mr. Theron stated "As CEO of Resource
2 Management, I acknowledge that Tracy Rust will be occupying an apartment at
3 Nexus Apartments at Orenco Station, commencing on April 15, 2009, under a
4 corporate lease in Resource Management's name. ..."

5 On or about April 11, 2009, Resource, through Theron, further stated in
6 writing to Nexus:

7 "This is to serve as a letter of responsibility for the
8 above listed rental unit ... Our company, Resource
9 Management, shall be responsible for payment of rent
10 and any other services/amenities/products contracted for
11 as a part of the rental agreement entered into with the
12 above named property and/or company.

13 Resource Management will also assume
14 responsibility for any damage beyond normal wear and
15 tear ...

16 Resource Management is a sole proprietorship that
17 operates on a cash basis under personal service
18 contracts." ECF No. 14, at 24.

19 Theron Rust also affirmed in a letter to Nexus, prior to the signing of the
20 lease, that Resource Management was financially responsible for the unit leased,
21 as well as any future units . The letter provided also authorized Tracy Rust to
22 occupy the unit and sign all rental agreements on behalf of Resource Management.

23 The lease was a corporate lease. In conformance with Nexus' policy
24 regarding references for corporate leases, Mr. Rust provided references on behalf
25 of Resource Management. The lease identified the resident of Unit #207 as
26 "Resource Management Corporate". The leasing consultant who was involved in
27 the lease of Unit #207 to Resource Management understood that Resource
28 Management was leasing the Unit, so that its employee Tracy Rust could use the
unit to perform work for resource Management in the Hillsboro, Oregon area.

Tracy Rust signed the lease on behalf of Resource Management on April 15,
2009, at the Nexus offices in Hillsboro, Oregon, within Washington County. Ms.
Rust confirmed to Nexus that she was an employee of Resource Management, a
company owned by Theron and Linda Rust, and would be using Apartment #207

1 while she performed work for Resource Management. Ms. Rust also specifically
2 identified Resource Management as the responsible party on the lease. Had Ms.
3 Rust been the responsible party on the lease, Nexus would have ordered a
4 background check on Ms. Rust. Because Resource Management was the lease
5 holder, Nexus ordered no such background check.

6 On October 30, 2009, Resource Management vacated the unit. A balance
7 of \$3,741.87 remained owing under the terms of the lease. Nexus sent a statement
8 for \$3,741.87 to Resource Management in care of Ms. Rust at her new address in
9 North Las Vegas, Nevada on or about November 20, 2009. Nexus assigned its
10 claim to Columbia on June 22, 2010. B&H filed suit against Plaintiffs on behalf
11 of Columbia in Washington County, Oregon on August 6, 2010 for the unpaid
12 account to Nexus. The case proceeded to mandatory arbitration. On or about May
13 17, 2011, Columbia was awarded the full amount owing on the lease (\$3,741.78)
14 plus attorney fees and costs. Judgment was entered in the Washington County
15 Circuit Court on August 4, 2010. The Rusts never appealed.

16 B. Legal Standards

17 The summary judgment procedure is a method for promptly disposing of
18 actions. See Fed. R. Civ. Proc. 56. The judgment sought will be granted if "there is
19 no genuine issue as to any material fact and the moving party is entitled to judgment
20 as a matter of law." Fed. R. Civ. Proc 56(c). "[A] moving party without the ultimate
21 burden of persuasion at trial may carry its initial burden of production by either of
22 two methods. The moving party may produce evidence negating an essential
23 element of the nonmoving party's case, or, after suitable discovery, the moving
24 party may show that the nonmoving party does not have enough evidence of an
25 essential element of its claim or defense to carry its ultimate burden of persuasion
26 at trial." *Nissan Fire & Marine Ins. Co., Ltd., v. Fritz Companies*, 210 F.3d 1099,
27 1102 (9th Cir.2000). If the movant meets its burden, the nonmoving party must
28 come forward with specific facts demonstrating a genuine factual issue for trial.

1 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106
2 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

3 If the nonmoving party fails to make a showing sufficient to establish the
4 existence of an element essential to that party's case, and on which that party will
5 bear the burden of proof at trial, "the moving party is entitled to a judgment as a
6 matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91
7 L.Ed.2d 265 (1986). In opposing summary judgment, the nonmoving party may not
8 rest on his pleadings. He "must produce at least some 'significant probative
9 evidence tending to support the complaint.'" *T.W. Elec. Serv., Inc. v. Pacific Elec.*
10 *Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (quoting *First Nat'l Bank v.*
11 *Cities Serv. Co.*, 391 U.S. 253, 290, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968)).

12 The Court does not make credibility determinations with respect to evidence
13 offered, and is required to draw all inferences in the light most favorable to the
14 non-moving party. See *T.W. Elec. Serv., Inc.*, 809 F.2d at 630-31 (citing
15 *Matsushita*, 475 U.S. at 587). Summary judgment is therefore not appropriate
16 "where contradictory inferences may reasonably be drawn from undisputed
17 evidentiary facts...." *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d
18 1324, 1335 (9th Cir.1980).

19 1. Defendant Columbia's Motion for Summary Judgment¹

20 The FDCPA precludes debt collectors from implementing unlawful debt
21 collection tactics against consumers. "Consequently, the [FDCPA] applies to
22 consumer debts and not business loans." *Bloom v. I.C. System, Inc.*, 972 F.2d 1067,
23 1068 (9th Cir. 1992). The FDCPA defines a consumer debt as, "any obligation or
24 alleged obligation of a consumer to pay money arising out of a transaction in which
25 the . . . property . . . which [is] the subject of the transaction [is] primarily for
26 personal, family, or household purposes. . . ." 15 U.S.C. § 1692a(5).

27
28 ¹B&H joined in Defendant Columbia's motion for summary judgment.

1 Defendants argue that despite the personal benefit to the plaintiffs and their
2 employee/family members, the plaintiffs clearly used the apartment for business
3 purposes and affirmed as much on the face of the apartment lease agreement. See
4 ECF No. 13, Exh. A. Defendants assert the debt was incurred by Resource
5 Management, and Theron Rust also confirmed its business purpose by describing
6 how Tracy Rust, an employee of Resource Management, would be occupying the
7 unit while she worked on projects for Resource Management in the Portland area.
8 Mr. Rust affirmed the same employee would deliver rent checks from Resource
9 Management to Nexus each month. Mr. Rust affirmed that his business, Resource
10 Management, would be responsible for the lease of the unit Tracy Rust would be
11 occupying, as well as any other units Resource Management may lease in the
12 future. Defendants conclude that all of the documents exchanged between Nexus
13 and Resource Management affirm the debt was incurred for a business purpose.

14 Plaintiffs respond in opposition that although a debt may be nominally
15 incurred by a business, it is the end use of the subject of the transaction creating the
16 debt that is determinative. Plaintiffs assert, relying on Ninth Circuit case law, that
17 where a debt is incurred in the name of a business, and has the ostensible form of
18 a business transaction, the debt would nonetheless be a consumer "debt" where the
19 subject of the loan was used for a personal, family, or household purpose. *Slenk v.*
20 *Transworld Sys., Inc.*, 236 F.3d 1072, 1075-76 (9th Cir. 2001).

21 Plaintiffs assert that the apartment was used as a residence. Even if any
22 business was done out of the apartment by Ms. Rust, such as occasional phone calls
23 or emails, that would not change the nature of the debt to a business debt, where the
24 apartment was being used as a residence, not only by Ms. Rust, but by her husband
25 and two cats – none of whom were involved in the business of Resource
26 Management. Plaintiffs conclude that the plain language of the FDCPA does not
27 require the debt be incurred "exclusively" for personal, family, or household
28 purposes, but only "primarily." 15 U.S.C. § 1692a(5).

1 The Court has considered the purpose for which the credit was extended in
 2 order to determine whether the transaction was primarily consumer or commercial
 3 in nature. It appears Mr. Rust, as CEO of Resource Management, clearly set this
 4 lease up as a “corporate lease” for a business purpose based on his representations
 5 to Nexus. Regardless of the personal or familial relationship between the owners
 6 of Resource Management and its employee Tracy Rust, the Court finds the lease is
 7 not a consumer debt because it was not entered primarily for personal, family or
 8 household purposes based on the documents exchanged between Nexus and
 9 Resource Management; Mr. Rust’s representations when the lease was established;
 10 and the undisputed facts of record. In this case, the Court finds the debt was for
 11 business purposes and is not within the purview of the FDCPA. Therefore,
 12 Plaintiffs’ FDCPA claims fail.

13 2. Defendant B&H’s Motion for Summary Judgment

14 Defendant notes that in the Oregon Litigation, Plaintiffs argued that they did
 15 not owe the debt because they did not sign the lease or have any contact with Nexus
 16 and asserted venue and jurisdiction were improper because they did not reside
 17 or sign any contract in Washington County. ECF No. 14, at Exh. B. Defendant
 18 argues that after the Washington County Circuit Court resolved Columbia's claim
 19 against Plaintiffs, Plaintiffs brought the instant action asking a federal court to rule
 20 on the very issues resolved by the state court. Under *Rooker-Feldman*², Defendant
 21

22 ²Under the *Rooker-Feldman* doctrine, a federal district court does not have
 23 subject matter jurisdiction to hear a direct appeal from a final state court
 24 decision. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003) (citing *District of*
 25 *Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983); *Rooker*
 26 *v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923)). Jurisdiction is barred only if
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1 concludes, this Court has no jurisdiction to do so.

2 Defendant further asserts that Plaintiffs are state-court losers. The arbitrator
3 entered judgment against Plaintiffs finding they were liable on the debt. Plaintiffs
4 have not appealed. Plaintiffs only injury is the judgment ordering them to pay the
5 debt and the costs of defending themselves against Columbia's claims. Because
6 of the nature of Plaintiffs' claims, to evaluate Plaintiffs' claims, the Court must
7 review and determine the validity of the underlying debt and the propriety of
8 Washington County venue just as did the arbitrator in the Oregon litigation.
9 Defendant concludes, although couched in terms of Defendants' conduct, all of
10 Plaintiffs' FDCPA claims require this Court to review the facts and issues decided
11 in the Oregon litigation. Therefore, under *Rooker-Feldman*, this Court has no
12 jurisdiction to hear Plaintiffs' claims.

13 The Court finds above that there is no issue of material fact as to whether the
14 corporate lease created a debt for purposes of the FDCPA. Summary judgment is
15 appropriate on all counts. The Court need not analyze Defendant B&H's motion to
16 dismiss under *Rooker-Feldman* as to Counts I, III and IV.

17 3. Conclusion

18 Plaintiffs cannot satisfy the fundamental requirement of any FDCPA claim
19 because the corporate lease did not create a "debt" as defined by the FDCPA.
20 Because Plaintiffs cannot create a genuine issue of fact, their Counts I through IV
21 are dismissed as a matter of law.

22 **IT IS HEREBY, ORDERED, ADJUDGED AND DECREED** that:

- 23 1. Defendant Bittner & Hahs, PC's Motion For Summary Judgment,

24 _____
25 the plaintiff is seeking review of a claim actually decided by a state court or a
26 claim that is "inextricably intertwined" with a state court judgment. *Kenmen*
27 *Eng'g v. City of Union*, 314 F.3d 468, 473 (10th Cir. 2002)).
28

1 **ECF No. 46, is GRANTED.**

2 2. Defendant Columbia Recovery Group, LLC's Motion for Summary
3 Judgment, **ECF No. 41, is GRANTED.**

4 3. Plaintiffs' Motion to Strike, **ECF No. 38, is DENIED as MOOT.**

5 **IT IS SO ORDERED.** The District Executive is directed to enter this order,
6 forward copies to counsel, and enter judgment consistent with this order.

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8 **DATED** this 19th day of April, 2012.

9
10 *S/ Lonny R. Suko*

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LONNY R. SUKO
12 United States District Judge
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